

2:19-cv-01697-JAD-DJA - March 19, 2021

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEVADA

3 COMMODITY FUTURES TRADING )  
COMMISSION, )  
4 ) Case No. 2:19-cv-01697-JAD-DJA  
Plaintiff, )  
5 ) Las Vegas, Nevada  
vs. ) March 19, 2021  
6 ) 10:34 a.m. - 12:17 p.m.  
DAVID GILBERT SAFFRON a/k/a ) Courtroom 6D  
7 DAVID GILBERT and CIRCLE ) MOTIONS HEARING  
SOCIETY, CORP., )  
8 )  
Defendants. )  
9 ) **CERTIFIED COPY**  
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10  
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS CONDUCTED VIA ZOOM  
12 BEFORE THE HONORABLE JENNIFER A. DORSEY  
13 UNITED STATES DISTRICT COURT JUDGE

14 APPEARANCES:

15 For the Plaintiff:

16 **DANIELLE E. KARST, ESQ.**  
17 **TIMOTHY J. MULREANY, ESQ.**  
COMMODITY FUTURES TRADING COMMISSION  
Three Lafayette Centre, 1155 21st Street, N.W.  
18 Washington, D.C. 20581  
19 (202) 418-6158

20 (Appearances continued on page 2.)

21 Court Reporter: Amber M. McClane, RPR, CRR, CCR #914  
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Las Vegas, Nevada 89101  
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24 Proceedings reported by machine shorthand. Transcript  
25 produced by computer-aided transcription.

UNITED STATES DISTRICT COURT  
Amber McClane, RPR, CRR, CCR #914

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1 APPEARANCES CONTINUED:

2 For the Defendants:

3 **JOHN H. GUTKE, ESQ.**  
4 GUTKE LAW GROUP, PLLC  
5 552 East Charleston Boulevard  
Las Vegas, Nevada 89104  
(702) 766-1212

6 Also Present:

7 George Malas, CFTC Investigator (Telephonically)

8  
9 \* \* \* \* \*

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1 LAS VEGAS, NEVADA; FRIDAY, MARCH 19, 2021; 10:34 A.M.

2 --o0o--

3 P R O C E E D I N G S

4 **COURTROOM ADMINISTRATOR:** Now's the time set for a  
5 motions hearing in Case Number 2:19-cv-1697-JAD-DJA, Commodity  
6 Futures Trade -- Trading Commission versus David Gilbert  
7 Saffron.

8 Counsel, please state your appearances for the  
9 record.

10 **MR. KARST:** Danielle Karst for the Commodity Futures  
11 Trading Commission.

12 **MR. MULREANY:** For the record, Tim Mulreany also on  
13 behalf of the Commission.

14 **MR. GUTKE:** John Gutke on behalf of the defendants,  
15 and also present on the video call is Mr. Saffron.

16 **MR. SAFFRON:** David Saffron present.

17 **THE COURT:** Thank you.

18 So, Mr. Gutke, you're here on behalf of Circle and  
19 Mr. Saffron?

20 **MR. GUTKE:** Yes, Your Honor, on behalf of the  
21 defendants.

22 **THE COURT:** Okay. Thank you.

23 And I understand we have a number of people on the  
24 phone. We muted them because it was very loud from here, and  
25 we couldn't really hear ourselves. So they can hear us, but

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1 we can't hear them.

2 Ms. Karst, do you -- is it your understanding that  
3 there are people that are attending by phone?

4 **MR. KARST:** From the CFTC, Your Honor, Investigator  
5 George Malas is on the phone and is on standby. He is  
6 available if the Court would like to hear from him. He has  
7 submitted two supplemental declarations in support of our  
8 default judgment motion and our third motion for an order to  
9 show cause.

10 **THE COURT:** Right. I think we have something like 35  
11 people appearing by phone. So I was just curious if either of  
12 the lawyers understand who those people might be.

13 **MR. KARST:** Other than Mr. Malas, Your Honor, I don't  
14 know.

15 **THE COURT:** All right. Mr. Gutke?

16 **MR. GUTKE:** I also do not know, Your Honor,  
17 specifically who would be on the phone, but I suspect that  
18 there are individuals who are interested because they are  
19 following this case. And among them would be several  
20 individuals who repeatedly contact my clients, sometimes with  
21 very vulgar threats and things like that. I'm not saying that  
22 everyone who would be listening is -- falls in that category,  
23 but I'm aware from my client that he gets regular contact from  
24 people who were -- who put money into Circle Society. So I  
25 assume that's who's on the -- on the line.

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1           **THE COURT:** All right. All right. Well, so let's go  
2 ahead and get to it. This is the plaintiff Commodity Futures  
3 Trading Commission's motion for default judgment. It's filed  
4 in the docket at Number 61. There's a motion for sanctions  
5 filed in the docket at Number 62. There's a motion to strike  
6 notice in the docket at 95, and then a third motion for order  
7 to show cause at Number 98.

8           These are fully briefed. I've read everything, I  
9 fully understand the arguments, but I'm still going to allow  
10 each side 15 minutes of arguments and. I will allow the  
11 Commission to reserve -- so, Ms. Karst, I'm assuming you're  
12 going to speak on behalf of the Commission; is that right?

13           **MR. KARST:** Yes, Your Honor.

14           **THE COURT:** All right. And I will allow you to  
15 reserve up to five minutes of your 15 for rebuttal. Do you  
16 want the full five minutes for rebuttal?

17           **MR. KARST:** Yes, Your Honor.

18           **THE COURT:** Okay. All right. So I'm going to put  
19 ten minutes then for you on the clock, Ms. Karst. And  
20 whenever you are ready, I'm ready to hear your argument.

21           **MR. KARST:** Thank you. Good morning, Your Honor.

22           With me on the video today is Timothy Mulreany. He  
23 is a chief trial attorney and the supervising attorney on this  
24 case. As I mentioned, Investigator George Malas is available  
25 on the phone and he's on standby if the Court wishes to hear

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1 from him.

2 Your Honor, we're here on multiple pending motions,  
3 but the issues really come down to this. The first issue is  
4 whether or not defendants have done anything to purge their  
5 contempt since the Court issued its January 2020 contempt  
6 order. And the answer to that is no. In fact, additional  
7 acts of contempt have been committed since that time, and we  
8 briefed, for example, the asset freeze violations in our third  
9 motion for an order to show cause.

10 The second issue, Your Honor, is whether or not this  
11 case is ripe for entry of a default judgment at this time, and  
12 the answer is yes.

13 The Court has already found defendants in contempt.  
14 The terms in the contempt order for defendants to purge their  
15 contempt were crystal clear, but since that time in  
16 January 2020 there have simply been no efforts for defendants  
17 to purge their contempt. Instead, what we have are only  
18 additional acts of contempt.

19 This is the CFTC's third motion for contempt and the  
20 fifth hearing that we've had in this case over the past 16  
21 months. And we're here today because of the contempt, which  
22 is taking up the Court's time, and the CFTC is forced to spend  
23 time and attorney's fees to seek compliance with this Court's  
24 orders.

25 Defendants are in complete contempt of the Court's

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1 three orders. I note that it has been 17 months from the  
2 entry of the October 2019 temporary restraining order. We are  
3 15 months from the December 2019 preliminary injunction order,  
4 and now we are over 13 months from the January 2020 civil  
5 contempt order.

6 The defendants have failed to produce any business  
7 records to this day. They have failed to produce an  
8 accounting to the Commission. They have failed to provide any  
9 responses to the written questions set forth in the Court's  
10 civil contempt order, and they have repeatedly violated the  
11 Court's asset freeze. And, in addition, defendants owe  
12 \$812,000 in daily fines as of today, none of which have been  
13 paid.

14 The Court -- the CFTC requests that the Court at this  
15 time grant its default judgment motion, and I'm happy to  
16 discuss that in further detail. We also ask that the Court  
17 grant the CFTC's motion for additional sanctions that was also  
18 filed in March of last year. This -- these are sanctions for  
19 defendants' failures to produce documents and accounting as  
20 required by the Court's orders.

21 And, finally, we ask that the Court grant the CFTC's  
22 third motion for an order to show cause finding defendants in  
23 contempt for violating the Court's asset freeze provisions of  
24 the temporary restraining order and the preliminary injunction  
25 order.

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1           And candidly, at this stage, Your Honor, the CFTC  
2           submits that the only remaining sanction available that has  
3           not been imposed by the Court is incarceration, and we believe  
4           that that is the only sanction that will compel defendants'  
5           compliance with Your Honor's orders.

6           **THE COURT:** Ms. Karst, let me talk -- I want to talk  
7           more about the motion for default judgment and the remedies  
8           that are requested for that default judgment. You are asking  
9           for disgorgement, restitution, and a civil penalty. I want to  
10          break those up a little bit.

11          Disgorgement and restitution, I'm seeing -- so  
12          there's the 14 -- 14-ish million dollars and the 15-ish  
13          million dollars. Talk to me about how much money did it --  
14          did the defendants acquire illegally.

15          So if I'm looking at a disgorgement or a restitution  
16          remedy, I think the distinction between those two figures is  
17          that CFTC has established that what happened was the defendant  
18          was taking in money, that \$15 million, but paid some of it  
19          back in this Ponzi scheme concept to make it appear like there  
20          were returns coming back, but really it was just money from  
21          Peter to pay Paul at that point.

22          Is that the distinction between those two figures?

23          **MR. KARST:** Yes, Your Honor. We have requested in  
24          our default judgment papers disgorgement of defendants'  
25          ill-gotten gains of 15.8 million, requesting this on a joint



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1 and several basis, along with post-judgment interest. And the  
2 disgorgement calculation requires only reasonable  
3 approximation of the profits causally connected to the  
4 violation. So at the time we filed our default judgment  
5 motion, that -- that amount was a total amount that we were  
6 aware of that defendants had taken in fraudulently at that  
7 time.

8 **THE COURT:** And what is that --

9 **MR. KARST:** And --

10 **THE COURT:** Tell me what that number is right now.  
11 Because what I want to make sure is that there aren't two  
12 different buckets here, that there wasn't a bucket of  
13 15 million something and a bucket of 14 million. The total  
14 taken in ill-gotten gains is one of those numbers, which I  
15 think is probably the 15.8.

16 **MR. KARST:** That's correct, Your Honor. The  
17 disgorgement is the total amount of funds solicited,  
18 15.8 million that we were aware of at the time of our filing.  
19 And the restitution figure, that is the 15.8 million minus the  
20 payments back to customers that we are aware of, which is  
21 \$974,000. So if you subtract those payments, we request  
22 restitution in the amount of 14.8 million. So it's -- it's  
23 the same -- we're going with the same larger number  
24 subtracting out the refunds or the Ponzi payments that  
25 customers -- certain customers received back.

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1           **THE COURT:** So if I were to order, for example, the  
2           14.8-ish million in restitution and disgorgement, it wouldn't  
3           be 14.8 in restitution and 14 -- another 14.8 in disgorgement;  
4           it's two separate vehicles for essentially the return or  
5           release or -- of the \$14.8 million?

6           **MR. KARST:** Your Honor, we're requesting both as we  
7           are authorized to do under the Commodity Exchange Act. We're  
8           requesting and we're entitled to request both for the  
9           disgorgement of ill-gotten gains and restitution to  
10          customers --

11          **THE COURT:** Right. So that --

12          **MR. KARST:** -- along with --

13          **THE COURT:** -- that's the way -- there's sort of two  
14          avenues to get at the same bucket of money; right? There  
15          aren't two buckets of \$14 million?

16          **MR. KARST:** That's correct.

17          **THE COURT:** Okay.

18          **MR. KARST:** And I think, to follow up on your  
19          previous question, Your Honor -- I don't, you know, want to  
20          miss it -- as I stated, at the time we are aware of 15.8  
21          million and 179 customers. And, you know, it's been a year  
22          since we filed the motion. So since that time, you know, we  
23          are aware of more funds that defendant solicited in the  
24          relevant time period. Today we are aware of \$16.5 million and  
25          210 customers. And, you know, the change in the numbers is

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1 really a reflection of defendants' ongoing contempt and our  
2 really inability to determine the full scope of the fraud and  
3 the number of defrauded customers. So that is an explanation  
4 as to why, you know, what we're aware of today is different  
5 than what we were aware of one year ago.

6 **THE COURT:** Okay. And so the numbers, though, in the  
7 motion for default judgment and proposed order, have you --  
8 has -- do I have a supplement that has the new numbers?

9 **MR. KARST:** No, Your Honor. I am -- the CFTC is  
10 happy to, you know, provide that and brief that to the Court  
11 and -- but we don't -- I don't have anything filed as of today  
12 with the Court, but I am happy to do so with the additional  
13 numbers.

14 **THE COURT:** All right. I want to talk about civil  
15 penalties now. So under the statute there are different  
16 approaches to -- that the Court can take to civil penalties.  
17 Essentially you're asking for three times the ill-gotten gains  
18 as a penalty here, which would be something in the range of,  
19 based on the prior numbers, \$47 million.

20 I don't think it does a lot of good to give the  
21 Government a civil penalty award that there are no potential,  
22 in a million years, ways for someone to satisfy. But also a  
23 civil penalty certainly has to have a deterrent effect. Can  
24 we talk then -- if you could kind of explore for me some of  
25 the thoughts behind various dollar amounts or ways that the

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1 Court should best calculate a civil penalty amount that would  
2 go along with this default judgment.

3 **MR. KARST:** Yes, Your Honor. You know, under our  
4 statute, you know, we're entitled to seek a civil monetary  
5 penalty, the higher of triple the gain from each violation or,  
6 you know, a straight today inflation adjusted is \$187,000 per  
7 violation. And it's really, you know, within the Court's  
8 authority and discretion to determine a civil monetary penalty  
9 that's both appropriate to the gravity of the offense, which  
10 what we here have are demonstrated, you know, acts of fraud  
11 over a number of years, defrauding of hundreds, if not  
12 thousands, of customers. So sufficient -- you know, we need a  
13 penalty that's sufficient to act as a deterrent. And we don't  
14 know that he -- that defendants are unable to pay \$47 million.  
15 We have never received a document to this day, no accounting.  
16 So I have no idea whether or not defendants could satisfy any  
17 or a portion of that.

18 **THE COURT:** All right. Thank you, Ms. Karst.

19 All right. I'm going to turn to Mr. Gutke. I'm  
20 going to put 15 minutes on the clock for you, sir.

21 **MR. GUTKE:** Thank you, Your Honor.

22 First of all, I think it is -- it's wrong for the  
23 CFTC to repeatedly mischaracterize the defendants' actions in  
24 this case as completely and wholly non-compliant. Counsel  
25 stated that defendants have failed to produce any business

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1 records, and that's just false, Your Honor. Their own  
2 documents demonstrate that, after the contempt hearing in  
3 January of last year, Mr. Saffron was in regular contact with  
4 them. He uploaded business records, as he promised to  
5 Your Honor that he would do in court that day, and had  
6 communications with them in an attempt to give them  
7 information regarding the business records that he was able to  
8 reconstruct or put together.

9 Even more recently since I've been retained, I've  
10 attempted to send over hard copies of customer records;  
11 reached out to counsel from the CFTC voluntarily advising  
12 them, hey, good news, I've got documents, I'd like to send  
13 them over to you, but I need a protective order because these  
14 documents contain customers records -- you know,  
15 cryptocurrency wallet addresses, things that are confidential  
16 that defendants have a reasonable interest in protecting  
17 their -- their customers' privacy -- and the response I got  
18 back was that of rage and anger for even asking for a  
19 protective order and accusing me of violating the Court's  
20 order by asking to be able to --

21 **THE COURT:** Mr. Gutke, when did --

22 **MR. GUTKE:** -- get a protective order.

23 **THE COURT:** -- when did these communications with  
24 CFTC happen?

25 **MR. GUTKE:** This would be in our opposition to motion

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1 at Docket Number 98, but this was approximately I would say a  
2 month ago.

3 **THE COURT:** Um-hum.

4 **MR. GUTKE:** I'm guessing.

5 **THE COURT:** Right.

6 **MR. GUTKE:** I couldn't give you an exact timeline on  
7 that. But that's a pattern, Your Honor, and that's -- and  
8 so --

9 **THE COURT:** And here -- here's -- here's my other  
10 question: Did you file a motion for a protective order?

11 **MR. GUTKE:** I have not been able to do that yet,  
12 Your Honor.

13 **THE COURT:** What do you mean you haven't been able to  
14 do that yet?

15 **MR. GUTKE:** Well, we had this court date coming up,  
16 other issues that have been brought forward by the CFTC that  
17 we've had to respond to. So really there's a more -- another  
18 answer to your question, Judge, that I need to step back a  
19 bit.

20 I mean, first of all, I assume and hope that it's  
21 okay that I'm here representing the defendants and that I'm  
22 not in violation of prior orders in this case. Because before  
23 I had even entered an appearance, I was immediately sent  
24 e-mails by counsel for the CFTC telling me that I am violating  
25 Judge Dorsey's orders by even being retained by the defendant.

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1 Just per se, if they hire attorneys, that is a violation of  
2 the Court's order.

3 And that's a disturbing pattern. And if this case  
4 moves forward and we're able to present additional information  
5 and file a motion to try to reset this case -- which I think  
6 is what should happen, so the defendants can defend  
7 themselves -- we will present -- and it's already in the  
8 record, Your Honor. Prior counsel has repeatedly been told by  
9 the CFTC and the CFTC has said on the record in court that, if  
10 the defendants retain counsel, that that's a violation of  
11 their preliminary injunction or the TRO before that, and that  
12 they would be violating the asset freeze, violating the  
13 injunction. And I have been threatened with motions for  
14 sanctions against me simply by trying to represent the  
15 defendant.

16 **THE COURT:** So wouldn't -- wouldn't the right  
17 approach then, Mr. Gutke, be that you come to the Court and  
18 you file a motion for some kind of a determination saying,  
19 hey, this is what I'm doing, I'm trying to represent, he's  
20 defaulted -- that's part of the problem, is that the  
21 defendants are defaulted.

22 But isn't your avenue of relief with the Court -- and  
23 yet, here we are, this case has been ongoing for over a year  
24 and a half, and yet these are the kinds of stories that I get  
25 every single time that we appear for a hearing, is this, oh, I

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1 didn't get a chance, I wasn't able to, we're really trying,  
2 just give us one more chance and we're going to -- we promise  
3 we're going to comply. And that -- I get -- that is the  
4 defendants' response that I get in -- and on the other side of  
5 that I have a mountain from CFTC of affidavits and documents  
6 and evidence showing me that there's ongoing fraud.

7 And it just seems that it's this pattern that's  
8 happening that really has to stop. And so I guess what I'm  
9 trying to ask is: Why didn't you come to the Court to seek  
10 relief if that is the situation you have that's going on?

11 **MR. GUTKE:** Well, Your Honor, I'll be the first to  
12 admit that this case, from having reviewed the record now, has  
13 been kind of -- I don't know the right word. I was going to  
14 say bungled. I don't know if that's a legal, technical term.  
15 But prior counsel -- that was my thought, was that, you know,  
16 why -- why didn't prior counsel file answers? Why didn't  
17 prior counsel respond to motions, and why did they come in and  
18 then withdraw?

19 But then, after going through and seeing the  
20 communications -- and then just after experiencing it myself.  
21 I can say honestly that, you know, I was on my heels  
22 immediately. I mean, the day -- the day after I had a limited  
23 agreement with the defendants to come in and try to just read  
24 the record, Judge -- I just wanted to read the docket and  
25 decide is this a case that we can take? You know, do we want



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1 to come on the case? I'm immediately getting e-mails that are  
2 just guns blazing.

3 And I'm not trying to play a victim here or accuse  
4 them of being bad people. But I've never dealt with counsel  
5 in any case -- I'm not inexperienced as some attorneys, but  
6 I've been around, you know, a decade and a half or more. And  
7 I've just never dealt with counsel who their immediate  
8 instinct is to sort of flex the authority that they have. And  
9 I would say that it's a unique situation because this is the  
10 Federal Government. I mean, this is the United States of  
11 American that's the plaintiff. It's not any plaintiff.

12 And when their initial contact with me is that of  
13 threatening me with disgorgement of funds, with contempt  
14 orders, et cetera, it puts you in an odd state of mind, Judge.  
15 And -- and not -- not in an odd state of mind. I'm not  
16 articulating this very well. But you become very defensive,  
17 and you start thinking, gosh, am I going to get in trouble?

18 And so going back and reading from prior attorneys  
19 and seeing the communications, they were getting the same  
20 thing. And so let's just go back to the most recent hearing  
21 before today -- and it's been awhile, but it was in January of  
22 2020. Mr. Saffron appeared pro se. You know, the very first  
23 thing he said was that he wants to make this right, he wants  
24 to return everyone's outlay to them and work with the CFTC to  
25 make -- you know, to rectify the situation --

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1           **THE COURT:** Right. And did --

2           **MR. GUTKE:** And --

3           **THE COURT:** -- that happen? Has everybody gotten a  
4 refund of all of their \$15 million?

5           **MR. GUTKE:** No. And, in fact, the first thing that  
6 the CFTC said to me when I -- when they told me that I was  
7 violating the Court's order by representing the defendants was  
8 that also they're in violation for trying to settle with any  
9 of the victims. And I went back, and I've looked at the  
10 orders. I don't see where it says that the defendants can't  
11 settle with people that are coming after them and demanding  
12 money. But the CFTC's position is very clearly, based on  
13 their -- what they've said, in fact, in the pending motion  
14 today, the third -- the third contempt motion, they've made it  
15 very clear that the CFTC's position is that the plaintiffs  
16 cannot pay anybody back. You know, it's got to go through  
17 them, I guess.

18           But, to me, what I -- my opinion on this and our  
19 position is that the CFTC is really not interested in having  
20 that restitution back to these alleged victims. And I think  
21 that's also demonstrated by the damages and penalties that  
22 they're asking in their default judgment request, which is,  
23 you know, 14-, \$15 million in restitution and disgorgement but  
24 \$47 million to the Government in civil penalties. You know,  
25 that's not going to the victims. And so I think that's one

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1 issue with the default judgment request that I have. The  
2 question is, so if the default judgment is entered, does that  
3 then -- is that akin to a class action settlement where anyone  
4 who is a victim of the claims that the CFTC has brought in  
5 this complaint, they've -- they don't have civil remedies and  
6 have to stop harassing my client and demanding money and  
7 threatening him with violence if he doesn't pay them? Those  
8 are issues that I think need to be briefed as far as the  
9 default judgment goes in terms of how that -- how would the  
10 default judgment affect the people that are the alleged  
11 victims of -- of the allegations in the complaint?

12 But getting back to then the hearing in January,  
13 Mr. Saffron appeared. He indicated he wants to cooperate, and  
14 then he did make efforts to cooperate after that time. He was  
15 given 14 days to produce documents. He sent over a list of  
16 multiple customers of Circle Society, more -- more individuals  
17 than what the Government has said today they've been able to  
18 determine. And he also asked for a protective order, which  
19 I -- I didn't even know that. I hadn't seen that part of --  
20 of the record when I requested the protective order. But  
21 their response to him was the same: No, we won't give you a  
22 protective order because that's a unilateral violation of the  
23 Court's order, you -- and they wouldn't -- wouldn't do it.

24 So to go back to what I was saying earlier, it's my  
25 opinion that the Government -- they don't want the defendants

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1 to be able to comply, and there's really nothing they could do  
2 to comply short of just going ahead and literally handing them  
3 over the keys to all their assets, you know [indiscernible]  
4 their bank accounts and the passwords to the bank accounts and  
5 giving them all their money. And that, to me, is just not a  
6 typical path of a civil lawsuit.

7 I understand that the Government got default in this  
8 case. The TRO was entered ex parte, I would add. And so  
9 because -- because of the way this case started, the  
10 defendants have literally never had an opportunity to defend  
11 the claims or the allegations. They have not had that  
12 opportunity. We've just been on our heels. And the  
13 Government has used that ex parte TRO from the start to --  
14 to -- as a sword to keep attorneys from being able to  
15 represent the defendants, to accuse the defendants of  
16 noncompliance with orders, to go out and get documents from  
17 banks and from third parties and from anyone even tangentially  
18 ever related to the defendants, getting bank records from my  
19 client's stepmother or subpoenaing them, subpoenaing records  
20 from individuals that he's worked with -- not just business  
21 records but personal records, family trusts of individuals who  
22 have worked with Mr. Saffron or who he has worked for.

23 Excuse me.

24 And -- and it's just -- it's been a difficult grind  
25 for the defendants because they've been told that they can't

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1 have counsel. So it's been a while, I know, but if the  
2 judge -- if you recall, Judge, in January of last year, when  
3 Mr. Saffron appeared in person, he was very I think -- at  
4 least the way I read the record -- sounded sort of sheepish,  
5 wasn't sure, you know, what was going to happen, thought he  
6 was going to go to jail even. I mean, he showed up that day  
7 despite the CFTC's repeated requests, which they continue to  
8 make in every single pleading, for him to be incarcerated.  
9 And that's only fueling the anger and hostility of the people  
10 who probably are the ones listening in on this hearing, who  
11 continually say you're going to be in jail, you're going to be  
12 raped, you're going to do this, that, and we're going to love  
13 to see you rot in hell, y'know?

14 And I understand the people are upset because they  
15 have a claim for damages for money, but no one deserves to  
16 have those threats given to them. And I think that the CFTC's  
17 demeanor and the manner in which they have litigated this case  
18 only fosters that -- that -- those actions. And I'm not  
19 blaming them for these people's actions either, Your Honor.

20 But my point is that from the start the defendants  
21 haven't really had an opportunity to actually defend the  
22 claims. And I know that you said that the CFTC continues to  
23 bring evidence -- mountains of evidence, affidavits, et  
24 cetera, of the ongoing fraud. But as I read the evidence,  
25 it's not all completely evidence. It's their speculation or

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1 their hunch or what they continually say is we have grave  
2 concern that this is happening or we've been informed that  
3 this is happening. So this is all hearsay. Even the motion  
4 for sanctions is based on their interpretation of -- of what  
5 information they have. It's -- it's really not what I would  
6 classify as proof positive --

7 **THE COURT:** And --

8 **MR. GUTKE:** -- that this is happening.

9 **THE COURT:** -- and have -- have the defendants filed  
10 a document in this case that breaks all of that down and  
11 demonstrates that this isn't true and provides their true  
12 defense in this case and shows how this isn't happening?

13 **MR. GUTKE:** I wish I would have been able to do that,  
14 Judge. I mean, I was able to get a small retainer. I'm  
15 overextended because the defendants don't have funds to even  
16 hire counsel because, again, they're told -- or I'm told, from  
17 the moment I even think about representing the defendants,  
18 that I can't do that without violating the Court's order. And  
19 that's after -- again, going back to the January 2020 hearing,  
20 Mr. Saffron said, I don't think -- my understanding is I can't  
21 have a lawyer. And Your Honor rightfully said no, absolutely  
22 you can have an attorney. And Your Honor even said, I don't  
23 know who would have told you that, but of course you can have  
24 an attorney. I don't want to characterize your words, but  
25 I've read the transcript a lot. I believe that's almost

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1 exactly what you said.

2 And the answer to your query in the January 2020  
3 hearing as far as who advised Mr. Saffron he can't have an  
4 attorney, the answer is the plaintiff. That's who continually  
5 has sent the message that you cannot hire counsel.

6 And so, what the CFTC wants is not to have to prove  
7 their claims on their merits. They want a default judgment to  
8 get relief based on the defendants not ever having an  
9 opportunity to defend themselves.

10 Back in October and December of 2019 when the  
11 defaults were entered, you'll recall -- recall that Mr. Van  
12 appeared, but he was even very skittish to appear because I  
13 think, again, he had been told you're going to be in contempt  
14 of Court.

15 And it's just something that, as an attorney, you  
16 don't take those sort of threats and accusations lightly,  
17 especially when it's, again, the United States of America  
18 Government, a regulatory body with a lot of power and  
19 capability that's saying that to you.

20 **THE COURT:** Right. I get that, Mr. Gutke. I get  
21 that. But the remedy is you come to the Court and you file a  
22 motion and you say, we're being told that we can't have -- he  
23 can't have a lawyer, you told him he could have a lawyer,  
24 let's figure out how we do this. There's clear case law --

25 **MR. GUTKE:** Right.

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1           **THE COURT:** -- on how this is -- is established, and  
2 no one took those steps.

3           And so it's just a history of a year and a half in  
4 this case where it's, oh, gosh, we really wish we had another  
5 opportunity and, no, we didn't do a thing to try to protect  
6 the defendants' rights here. The defendant didn't do a thing  
7 to protect his rights here. And at some point, you know, the  
8 music stops and there's no chairs left here, and I'm afraid  
9 that's where we're at right now.

10           So I appreciate your argument. Thank you very much.  
11 Your time is up. I'm going to move back to Ms. Karst for her  
12 five minutes of rebuttal.

13           Go ahead, Ms. Karst.

14           **MR. KARST:** Thank you, Your Honor.

15           There are a lot of falsehoods, misrepresentations in  
16 Mr. Gutke's statements to the Court. You know, these are all  
17 kind of interesting arguments we feel -- and, you know, we  
18 briefed some of these arguments in our brief last week -- but  
19 this is really just a sideshow. This is the same song and  
20 dance that we've been hearing. Additional time for the  
21 defendants to comply really accomplishes nothing. We feel as  
22 though defendants are litigating in bad faith.

23           Counsel said that Mr. Saffron had been in regular  
24 contact with the CFTC and had, in fact, uploaded his business  
25 records. Okay. That's a false statement. I can tell you



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1 what we have received from Mr. Saffron, which -- none of which  
2 are business records. He sent two Excel files to the CFTC  
3 that he claimed he compiled; therefore, using withheld  
4 business records. These were files listing over 2,000 names.  
5 There are no headings to these files. It just simply lists  
6 names, e-mail addresses, and virtual currency addresses. That  
7 is all that he's produced. So I don't -- you know, we've yet  
8 to see a single business record produced to this day despite  
9 Your Honor's civil contempt order ordering the production of  
10 those records over a year ago.

11 And, in fact, Mr. Gutke sent the CFTC an e-mail over  
12 a month ago saying he was in possession of, quote, a  
13 significant volume of documents; however, we've yet to see the  
14 first document. We provided Mr. Gutke with an FTP link to  
15 upload those documents and/or the option to deliver paper  
16 copies to the U.S. Attorney's Office there in Las Vegas. And  
17 we find it outrageous that counsel is and has been in  
18 possession of records but hasn't produced any of them to us in  
19 clear defiance of the Court's orders.

20 And his arguments regarding a request for a  
21 protective order, well, that's requesting a modification of  
22 the Court's order, and that's improper, Your Honor. If he  
23 wants to make an application to the Court for a protective  
24 order, you know, he can. It is not necessary here. We  
25 already have Your Honor's clear orders for defendants to

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1 produce their records, and we -- we simply cannot agree to any  
2 kind of modification outside of those terms. That would  
3 violate the local rules, the federal rules of civil procedure,  
4 and counsel admitted he had done nothing to seek a protective  
5 order. It appears that's simply another excuse at this late  
6 stage for defendants' failure to comply and, indeed, to  
7 disobey the Court's orders.

8 And as, you know, the substance of a protective  
9 order, you know, it's not necessary here. We actually need  
10 and want records that identify all the customers. We need to  
11 determine where the funds came from, where they went to. You  
12 know, we need all of this information in order to obtain full  
13 restitution for customers.

14 And if defendants are truly concerned about  
15 confidentiality, then, you know, they can produce the  
16 documents to the Court *in camera*, and the Court can make a  
17 facial determination. But, you know, we've seen nothing.  
18 This is simply, you know, another excuse as to why, you know,  
19 over a year since the civil contempt order defendants have not  
20 obeyed this Court's orders.

21 **THE COURT:** All right. Thank you.

22 All right. So it's my intention to rule on these  
23 motions on the record today, but I'm also going to enter a  
24 written order that memorializes the rulings that I make today.

25 I'm going to begin with the Commission's motion for

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1 default judgment, and I'm going to walk through that.

2 So Federal Rule of Civil Procedure Rule 55(b)(2)  
3 permits a plaintiff to obtain default judgment if the Clerk  
4 previously entered default based on a defendant's failure to  
5 defend. After entry of default, the complaint's factual  
6 allegations are taken as true except those relating to  
7 damages. Whether to grant a motion for default judgment lies  
8 in the Court's discretion, which is guided by the seven  
9 factors outlined by the Ninth Circuit in *Eitel versus McCool*.  
10 That's at 782 F.2d 1470.

11 Applying the *Eitel* standards to this motion, I grant  
12 it in part. I'm going to walk through the *Eitel* factors, but  
13 I'm going to analyze them a little bit out of order.

14 I'm going to start with the first, fifth, and sixth  
15 *Eitel* factors. The first factor requires me to consider  
16 whether the Commission would suffer prejudice if I denied its  
17 motion for default judgment. The fifth requires me to  
18 consider if there's a possible dispute concerning material  
19 facts. And under the sixth factor I consider whether  
20 defendants' default may have resulted from excusable neglect.

21 I begin analyzing these factors by noting that  
22 defendants' dilatory behavior is well documented in my orders  
23 filed in the docket at Number 52 and 57. In short, Circle  
24 Society never answered the complaint. Saffron's answer was  
25 late and struck because he had already been defaulted. So he

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1 was given a deadline to move under Rule 55(c) to set aside the  
2 default. He blew that deadline by nearly a month. When the  
3 defendants eventually moved to set aside the defaults, they  
4 didn't mention their motion's tardiness let alone show that  
5 their delay was the product of excusable neglect. I  
6 nonetheless considered the motion on its merits, but I denied  
7 it after carefully considering the three disjunctive factors  
8 set out by the Ninth Circuit in *Faulk*, F-a-u-l-k, versus *Allen*  
9 at 739 F.2d 461 for determining motions to set aside the entry  
10 of default. I concluded that, although defendants had a  
11 good-faith explanation for their defaults -- basically  
12 problems obtaining representation -- they were overshadowed by  
13 evidence of their devious and deliberate conduct seeking to  
14 skirt the judicial process. That is my order at Document  
15 Number 77.

16 Since I made that finding, the defendants have done  
17 nothing to alleviate my concerns that their conduct is  
18 intended to avoid any decision on the merits in this case.  
19 Indeed, despite obtaining new counsel last December,  
20 defendants have not sought leave to file a response to the  
21 default judgment motion or clarified my perception about their  
22 behavior or move to reconsider, modify, alter, or amend any of  
23 my prior orders in this case. I'm, therefore, persuaded that  
24 the first *Eitel* factor weighs heavily in favor of default  
25 judgment because the Commission's ability to obtain a judgment

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1 on the merits will be prejudiced if I denied its motion for  
2 default judgment.

3 The sixth factor also weighs in favor of default  
4 judgment because, as my prior ruling on the motion to set  
5 aside default indicated, the default was not the product of  
6 excusable neglect.

7 Also troubling is the fact that the defendants have  
8 not identified a clear defense to the Commission's claims or  
9 offered any proof to show that they have a meritorious defense  
10 or basis to dispute the material facts, as I highlighted  
11 during Mr. Gutke's argument. The most that the defendants  
12 have offered is their attorney's statement last March in  
13 moving to set aside default that, quote "As will be set forth  
14 in greater detail in a subsequent filing with the Court, it  
15 increasingly appears that plaintiff simply misunderstands the  
16 workings and basis of defendants' business," end quote. So  
17 the fifth *Eitel* factor also weighs in favor of default  
18 judgment.

19 I'm going to take a quick aside here because  
20 something just occurred to me. I note that we do have a  
21 number of people who are listening in on this hearing. I'm  
22 assuming that they are the public for the most part who have  
23 an interest in this hearing and so, unfortunately, we, because  
24 of the pandemic, are not having large, in-person hearings.  
25 This one's being conducted by video. So the public is allowed

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1 to attend by telephone, and it appears that that's what's  
2 happening.

3 I want to let anyone who is listening by phone to  
4 know that the rules of this Court and the orders of this Court  
5 prohibit anyone from live streaming the audio of this or the  
6 video of this. They also prohibit anyone from recording and  
7 keeping a recording or playing later a recording or posting it  
8 on the Internet or e-mailing it to someone or texting it to  
9 someone. So if anyone is listening or observing this hearing,  
10 please know that the orders of this Court expressly prohibit  
11 you from recording this and disseminating a recording of this  
12 or otherwise sharing a recording of this.

13 Thank you. I apologize for that aside.

14 But I'm going to jump back into the *Eitel* factors,  
15 and I'm going to turn to the second and third *Eitel* factors,  
16 which are the merits of the plaintiff's claim and the  
17 sufficiency of the complaint.

18 Taking the many well-pled facts in the complaint as  
19 true and considering the evidence that the Commission has  
20 provided throughout the entirety of this case, I find that  
21 these factors also weigh in favor of granting default  
22 judgment. The Commission's complaint contains four claims for  
23 relief under the Commodity Exchange Act. The first claim  
24 contends that defendants committed options fraud in violation  
25 of the Act.

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1           To prevail on this claim, the Commission must prove  
2           that: One, the defendants made a representation, misleading  
3           statement, or a deceptive omission admission; two, defendants'  
4           conduct or omissions were either reckless or intentional; and  
5           three, materiality.

6           The Commission has alleged and shown that the  
7           defendants made material misrepresentations to their  
8           participants, that their funds would be pooled and used to  
9           trade binary options on foreign and cryptocurrency pairs for  
10          the participants' benefit when, in reality, Mr. Saffron placed  
11          those funds in his personal E-Wallet and used some of them to  
12          pay the profits that the defendants guaranteed to earlier  
13          participants in the manner of a Ponzi scheme, and to further  
14          the allusion that pooled options trading was actually going  
15          on. Defendants also misrepresented that profits were  
16          guaranteed. They, likewise, guaranteed that participants  
17          would be paid referral fees for each investor steered to  
18          defendants' alleged commodity pool.

19          The Commission has demonstrated that defendants acted  
20          with knowledge that their statements were false and has shown  
21          that defendants acted with reckless disregard for the fact  
22          that trading these types of commodities is risky and profits  
23          cannot be guaranteed. Saffron's failure to disclose that  
24          neither he nor Circle Society were registered with the  
25          Commission was at least done in reckless disregard of the true

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1 fact. And the allegations and evidence show that defendants  
2 misappropriated the participants' funds by using the deposits  
3 of later participants to pay the profits that were guaranteed  
4 to earlier participants. The Commission has, therefore,  
5 established a meritorious claims for options fraud under 7 USC  
6 § 6c(b).

7 The Commission's second claim asserts that Circle  
8 Society committed fraud in its capacity as an unregistered  
9 commodity pool operator and Saffron committed fraud in his  
10 capacity as an unregistered associated person both in  
11 violation of the Act. This claim shares elements, alleged  
12 conduct, and evidence with the Commission's options fraud  
13 claim, and it is similarly and likewise meritorious.

14 The Commission's third claim alleges that defendants  
15 failed to comply with 17 CFR § 4.20's requirements that a  
16 commodity pool operator operate its pool, quote, "as an entity  
17 cognizable as a legal entity separate from that of the pool  
18 operator," end quote, receive all funds in the pool's name,  
19 and prohibition against commingling property of the pool with  
20 property of another person.

21 And its fourth claim alleges that Circle Society  
22 failed to register as a commodity pool operator and Saffron  
23 failed to register as an associated person resulting in both  
24 of them violating 7 U.S.C. § 6m(1)'s requirement that only  
25 registered entities can use the U.S. Mail system and



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1 instrumentalities of interstate commerce to conduct business  
2 as commodity pool operators. These claims are also  
3 meritorious, so the second and third *Eitel* factors weigh in  
4 favor of default judgment.

5 The seventh *Eitel* factor, the policy favoring  
6 judgments on the merits, with respect to that one, generally  
7 default judgments are disfavored because cases should be  
8 decided upon their merits whenever reasonably possible, but  
9 here the defendants have acted on their own slow timetable or  
10 no timetable throughout the entirety of this case. They have  
11 also failed to provide any basis for me to conclude that they  
12 could present a meritorious defense to the Commission's  
13 claims. It is not possible to decide a case on the merits  
14 when one side offers none, so this factor weighs in favor of  
15 granting default judgment.

16 Finally, I back up and reach the fourth *Eitel* factor  
17 which requires me to compare the amount of money at stake with  
18 the seriousness of the defendants' conduct. This is the most  
19 difficult factor in this case because the numbers are  
20 enormous.

21 The Commission seeks restitution against the  
22 defendants jointly and severally in the amount of \$14,841,280,  
23 which it argues and provides evidence to show constitutes the  
24 amount that defendant solicited from at least 179  
25 participants, less the amount that defendants paid to earlier

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1 participants, to prop up the scheme that funds were being  
2 pooled and traded for guaranteed returns. It also seems  
3 disgorgement from defendants jointly and severally of  
4 \$15,815,967, which it argues and provides evidence to show  
5 constitutes the known amount of funds the defendants solicited  
6 from the participants. The difference between the numbers is  
7 that some of the money, almost a million dollars, was returned  
8 as alleged profits or payments to -- to some of the  
9 participants.

10 And the Commission seeks a civil penalty against the  
11 defendants jointly and severally in the amount of \$47,447,901,  
12 which is three times the sum that the defendants gained from  
13 their years-long fraudulent scheme. The Commission relies on  
14 the detailed and unrebutted declarations of its investigator,  
15 George Malas, to support its damages request.

16 The evidence shows that the defendants acted with  
17 knowledge and intent to defraud the participants. They used  
18 sophisticated means to create the illusion of legitimacy for  
19 their scheme, and they repeated that conduct nearly 200 times.

20 The Commission has demonstrated to my satisfaction  
21 that defendants' conduct was egregious and intentional, but in  
22 no way has the Commission presented evidence, reasoned  
23 argument, or authority justifying an order of restitution,  
24 disgorgement, and civil penalties for more than \$78 million.

25 I've wrestled with this issue and these numbers, and

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1 I find that what is fair and just here is an award of  
2 disgorgement and restitution -- which are two different ways  
3 to get to the single bucket of money that is left -- that was  
4 collected and not returned to participants, and that amount  
5 has been demonstrated by the Commission to be \$14,841,280.  
6 And on top of that, a civil penalty I'm going to assess in the  
7 amount of \$1,484,128 against the defendants jointly and  
8 severally plus post-judgment interest under 28 USC § 1961.

9 The civil penalty represents 10 percent on top of the  
10 amount that the defendants gained through their scheme and  
11 will be required to return. I believe that these amounts will  
12 deter these defendants from engaging in similar unlawful  
13 behavior in the future and will allow their defrauded  
14 participants to also be made whole.

15 So I grant the Commission's damage request in part  
16 and find that this reduced amount causes this factor to also  
17 weigh in favor of default judgment.

18 And to ensure better future behavior by these  
19 defendants, I also grant the Commission request for a  
20 permanent injunction. In actions seeking statutory  
21 injunctions, once a violation is demonstrated, the moving  
22 party need show only that there's some reasonable likelihood  
23 of future violations.

24 In determining whether to enter a permanent  
25 injunction, courts consider: One, the egregiousness of the

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1 defendant's actions; two, the isolated or recurrent nature of  
2 the infraction; three, the degree of scienter involved; four,  
3 the sincerity of the defendant's assurances against future  
4 violations; five, the defendant's recognition of the wrongful  
5 nature of his or its conduct; and sixth, the likelihood that  
6 the defendant's occupation will present opportunities for  
7 future violations. That's the *Ginsberg* case.

8           The Commission has demonstrated that defendants'  
9 violations were not isolated but occurred at least 179 times.  
10 It provides evidence that Mr. Saffron enticed some  
11 participants with live demonstrations of his fake computer  
12 trading bots and automated bots/AI trading software and used  
13 attorneys to provide a veneer of legitimacy to the scheme.  
14 These deceptions show that defendants intended to deceive,  
15 defraud, and manipulate their participants.

16           There have been no believably sincere assurances  
17 against future violations or recognition that the wrongful --  
18 of the wrongful nature of this conduct, nor is there evidence  
19 that Mr. Saffron has legitimate employment that will steer him  
20 away of the opportunity to violate the Act in the future.  
21 Thus, a permanent injunction under Title VII United States  
22 Code § 13a-1(a) and in the form requested by the Commission is  
23 warranted.

24           In deciding the Commission's motion for default  
25 judgment, I reviewed and considered defendant's notice at

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1 Number 94. So, because I did, I deny the Commission's motion  
2 to strike that notice, which is at Number 95.

3 And because I grant the Commission's request for a  
4 permanent injunction, which necessarily dissolves the  
5 preliminary injunction, I deny as moot its motion for  
6 additional sanctions at Number 62 and its third motion for  
7 order to show cause at Number 98. These are moot because, as  
8 courts recognize, if a civil contempt order is coercive in  
9 nature -- and these were -- this one was -- it's mooted when  
10 the proceeding out of which it arises terminates. And so,  
11 because we are now replacing those prior orders with a  
12 permanent injunction and a default judgment and a civil  
13 penalty, it has become mooted.

14 I think that resolves all of the motions. Ms. Karst,  
15 I'm going to turn to you and ask if there are any questions or  
16 any clarification is necessary.

17 **MR. KARST:** Your Honor, I just want to clarify, the  
18 Court is ordering restitution and a civil monetary penalty but  
19 no disgorgement?

20 **THE COURT:** Well, let's talk about that for a minute.  
21 What I want to -- I have -- I'm comfortable with both  
22 remedies. I'm not comfortable with double-dipping as the  
23 remedies. So the goal is to get the ill-gotten gains back to  
24 the victims. And that's where I want the money to go to, and  
25 so I focus heavily on restitution because that becomes a

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1 remedy for the victims.

2 If you can explain to me what the Commission would do  
3 with disgorgement and how that would either somehow enhance  
4 the opportunity or availability of the money to go back to the  
5 victims or impact it?

6 **MR. KARST:** Yes, Your Honor. We -- you know, we're  
7 seeking for both disgorgement and restitution. Restitution of  
8 course goes back to the victims. The disgorgement, it is a  
9 separate remedy that we are entitled to seek which the Court  
10 has the power to order for Mr. Saffron's and Circle Society's  
11 violations. And the purpose is to deprive the wrongdoer of  
12 their ill-gotten gains and to deter violations of law. So we  
13 find that disgorgement is a separate remedy.

14 **THE COURT:** So tell me this. So there's only one  
15 bucket of 14-ish million dollars; right?

16 **MR. KARST:** Yes, Your Honor.

17 **THE COURT:** So I want that \$14 million to come back  
18 to the victims. What is my best vehicle to accomplish that in  
19 the Commission's opinion?

20 **MR. KARST:** I mean, the money ordered, you know, that  
21 is collected for restitution, that will go back to the  
22 victims, but we also think that disgorgement from the  
23 defendant is warranted here.

24 **THE COURT:** But there's only one bucket, so I -- I'm  
25 just trying to understand how this operates from the

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1 Commission's perspective.

2 Tell me this. Are there different collection methods  
3 for restitution versus disgorgement?

4 **MR. KARST:** I'm going to ask Mr. Mulreany if he would  
5 like to address that issue, Your Honor.

6 **THE COURT:** Mr. Mulreany, can you help us out?

7 **MR. MULREANY:** Good morning, Your Honor. For the  
8 record, Tim Mulreany on behalf of the plaintiff.

9 I think that discussion has to start off with the  
10 fact that Congress has created the remedies of disgorgement  
11 and restitution as two separate items that are statutorily  
12 created in the Act, and it comes from a recognition that two  
13 things are happening when a fraud takes place. First,  
14 customers are being deprived of their assets unlawfully, which  
15 your order has already handled in the restitution order. But  
16 the second aspect of it is that over the last two to three  
17 years, as alleged in the complaint, Mr. Saffron and Circle  
18 Society have been spending funds to support their unlawful  
19 lifestyle. Those funds need to come back; otherwise, what  
20 happens is the defendant is allowed to enjoy the fruits of his  
21 fraud with no penalty.

22 This dovetails into the Commission's request and  
23 Your Honor's order for an accounting. Unless an accounting  
24 takes place and the defendants provide us with the private  
25 wallet addresses of their Bitcoin wallets, the Commission is

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1 left with no vehicle through which it can obtain restitution  
2 for the customers nor can it have an accurate number -- a more  
3 accurate number, I should say, than what has already been  
4 presented as to the amount of disgorgement that the defendants  
5 should lawfully pay.

6 It's not -- it's not really one bucket as much as  
7 it's one bucket with two sections. The first section is  
8 restitution. That clearly goes back to the customer. Under  
9 our scheme, all funds we obtain go back to customers and  
10 payment of the restitution order. And then to the extent  
11 other funds are collected above and beyond that amount,  
12 disgorgement is paid and goes back to the United States  
13 Treasury as a way to, in effect, pay for the enforcement  
14 activities of the Commission and other federal agencies. It  
15 has the added benefit of depriving the defendants of their --  
16 their unlawful gains.

17 **THE COURT:** But if the entirety of the unlawful gains  
18 are victim funds and they're going to the Treasury, what's  
19 left for the victims?

20 **MR. MULREANY:** Well, I'll put it to you this way,  
21 Your Honor. The -- the Bitcoin -- the particular commodity at  
22 issue here is Bitcoin. Like all commodities, its value  
23 increases and decreases. If we're to believe Mr. Saffron  
24 that, indeed, he took in 600 -- or, excuse me, 6,882  
25 approximate Bitcoins, well, when we filed this case, the



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1     Bitcoins' value I think was somewhere in the area of about  
2     \$1,500 a Bitcoin.

3             The massive volatility of Bitcoin, just like other  
4     commodities, can't be guaranteed; it goes up, it goes down.  
5     Well, at present, I think last Friday Bitcoin closed somewhere  
6     around \$56,000. Therefore, to the extent that Mr. Saffron is  
7     currently holding Bitcoin belonging to customers, well, that  
8     6,800 Bitcoin would be worth somewhere in the neighborhood of  
9     \$412 million.

10            If we only get an order for \$14 million and change  
11     and approximately a \$1.5 million penalty, Mr. Saffron is  
12     sitting on approximately, you know, somewhere in the  
13     neighborhood of \$400 million worth of Bitcoin that doesn't  
14     belong to him. The Court can address this issue by, in  
15     essence, bifurcating the proceedings. And [indiscernible]  
16     liability now, as the Court has indicated on all counts, enter  
17     the injunctive relief as indicated on all counts, incarcerate  
18     Mr. Saffron until such time as he obeys the Court's contempt  
19     order, and once he does, we'll have the ability to provide the  
20     Court with a more up-to-date and accurate number of what was  
21     taken in and what he has spent.

22            The only remedy to date that's going to encourage  
23     Mr. Saffron to comply with this Court's authority is a civil  
24     contempt order. He can surrender himself to the United States  
25     Marshal's Office in wherever city that's located now. Or if

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1 he fails to do that, Your Honor can issue a bench warrant and  
2 the marshals can pick him up, remand him to custody in the  
3 district of Nevada, and at that point in time Mr. Saffron will  
4 have the keys to his confinement. He can release himself at  
5 any time; all he has to do is comply.

6 I think that it's important to demonstrate to  
7 individuals, such as Mr. Saffron who choose to defraud members  
8 of the public, that this Court's authority will be upheld and  
9 that neither the Commission nor the Court will allow  
10 fraudsters such as Mr. Saffron to get away with and enjoy the  
11 fruits of ill-gotten gains.

12 **THE COURT:** All right. You have -- you have  
13 explained to me why disgorgement is separate and additional.  
14 Because it is the idea that by getting -- by taking in these  
15 funds and using other people's money, he's had the opportunity  
16 to make additional money off of that and that he needs to  
17 disgorge the profits and benefits that he has experienced as a  
18 result of holding all of these other victims' money. So thank  
19 you for that clarification.

20 Let me just make sure, that's essentially what you're  
21 telling me; right? That's the disgorgement side?

22 **MR. MULREANY:** Your Honor is correct.

23 **THE COURT:** Okay. All right. Let me ask this  
24 question then. We don't know how much that is?

25 **MR. MULREANY:** Until the defendants obey your Court's

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1 orders, that -- that's correct. We have -- the Commission  
2 has, through the sheer hard work of counsel and our  
3 investigators and the cooperation of defrauded customers, been  
4 able to come up with the \$14,841,280. But we know, through  
5 the somewhat happenstance of the slight candor of Mr. Saffron,  
6 that he took in 6,882 Bitcoin.

7 So at today's rate, 6,882 Bitcoin has a current value  
8 of approximately 412 -- \$412 million. If we don't order  
9 Mr. Saffron to disgorge those amounts, if he doesn't comply  
10 with this Court's order to provide an accounting and all his  
11 Bitcoin private wallet addresses -- Bitcoin, by its nature, is  
12 a non-transparent commodity. The blockchain allows one to  
13 determine whether or not a transaction has been taken, but it  
14 doesn't allow us to determine with any clarity as to the  
15 destination or the holder of it.

16 Indeed, if Mr. Saffron is holding what's been called  
17 a cold wallet, that is a -- he has in his possession a USB  
18 drive that has, you know, 6,000 Bitcoin destinations on it but  
19 it's separate from the Internet, well, that's cold. We can't  
20 see it until he decides to begin using it. We know some of  
21 the numbers, but until he complies with the Court's order to  
22 provide us with all of the Bitcoin addresses, then customers  
23 will never see -- see their full restitution. They'll never  
24 have the benefit of their funds which have been held and used  
25 by Mr. Saffron. And, indeed, this Court's authority will be

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1 laughed at by Mr. Saffron and his compatriots.

2           **THE COURT:** All right. So here's what I'm going to  
3 do. I -- I'm going to maintain the order that I have provided  
4 with respect to disgorgement -- I'm sorry, with respect to  
5 restitution, that \$14 million figure, and maintain the civil  
6 penalty amount that I have provided, the 1.484 figure.

7           I'm going to, on top of that, also order disgorgement  
8 in the amount that the Government has sought and demonstrated  
9 in its moving papers, which is \$15,815,967. So that's the  
10 amount that the Government asked for and has demonstrated in  
11 its moving papers. So I'm going to go with that figure  
12 because that's what has been established.

13           Also, I'm obviously not thrilled with the defendant  
14 and his behavior and his failure to file updates or additional  
15 information, and so I'm also, you know, going to have to apply  
16 somewhat of a goose-and-gander approach to this, which is the  
17 Government had the opportunity to present me with all of its  
18 information, so I'm going to go with the information that the  
19 Government has presented me in time for this hearing today on  
20 these critical issues.

21           So restitution of \$14,841,280 for the victims,  
22 disgorgement of \$15,815,967, and a civil penalty of  
23 \$1,484,128.

24           There are other aspects that I think will -- of -- of  
25 how the -- the mechanisms of this occur that will be in the

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1 written portion of the order that I do file. I am not  
2 ordering that he be arrested at this point because the  
3 violations were -- that have been occurring were contempt  
4 sanctions, civil contempt sanctions, and those are coercive.  
5 And those were for orders that have now been supplanted by the  
6 permanent injunction that I am entering today. So I'm not  
7 going to be ordering his arrest right now, and my biggest goal  
8 at this moment is to get this money refunded to the victims  
9 and to ensure that the restitution amounts are getting paid.

10 Am I certain that will happen? No, not based on the  
11 defendants' conduct for the last year and a half. But we're  
12 going to do what we can under the law to accomplish that at  
13 this point. And so the -- the posture to this case has  
14 changed, default judgment is entered, and a permanent  
15 injunction and awards of disgorgement, civil penalty, and  
16 restitution.

17 So I'll go back to Ms. Karst or Mr. Mulreany. Any  
18 additional questions?

19 **MR. MULREANY:** I have one -- one question,  
20 Your Honor. Your Honor has the authority to incorporate  
21 certain aspects of the civil contempt order into its final  
22 default judgment. Specifically, the Court has the authority  
23 to order the defendant to produce all his business records,  
24 the accounting, and to answer the questions that were set  
25 forth in the civil contempt order and the final default

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1 judgment and provide a timeline.

2 The Commission is more than happy to move forward  
3 with that -- on that basis. The Court appreciates the -- or  
4 the Commission appreciate's the Court's well-reasoned decision  
5 and surely accepts it. The Commission also notes that, you  
6 know, to the extent that we can finally get the defendants to  
7 comply with the record production order, the accounting order,  
8 and the -- answer the questions regarding the private wallet  
9 addresses, we can move forward to obtaining restitution --  
10 full restitution for defrauded customers. And to the extent  
11 that we find out that the number far and exceeds that which we  
12 were able to prove today, the Commission would have the  
13 ability to move for a modification of the Court's order  
14 pursuant to Federal Rule of Civil Procedure 60 based upon the  
15 fraud of the defendants upon this Court.

16 Finally, mister~ -- my brother counsel, Mr. Gutke,  
17 has noted that he holds records regarding the defendants'  
18 activities. The Commission would ask that the Court order  
19 Mr. Gutke to immediately, as in by close of business today,  
20 produce those records either via the FTP site the Commission  
21 has provided with him to upload them, or if those records are  
22 not in electronic format, that the Court order Mr. Gutke to  
23 deliver those records in full to the office of the  
24 United States Attorney, which is located in the building next  
25 to the federal courthouse in Las Vegas, Nevada.

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1           **THE COURT:** So those I think are the records that  
2 Mr. Gutke was indicating he wanted a protective order first.

3           Mr. Gutke, what -- what is the protective order that  
4 you would have been seeking for those?

5           **MR. GUTKE:** I really was asking for what would be a  
6 standard protective order in any civil litigation case that I  
7 typically litigate, which would be to be able to designate  
8 documents as confidential or highly confidential based on the  
9 fact that they contain information -- personal information  
10 regarding the defendants' customers and -- or I would give  
11 them the records with things redacted, with that type of  
12 information redacted, but I was told in no uncertain terms  
13 that I could not redact anything. So that would be -- that's  
14 the nature of the protective order that I was seeking from the  
15 CFTC.

16           And then, for the record, earlier I know that when  
17 the Court said that the protective order was never sought, I  
18 know what you meant was never sought through the Court. But  
19 we -- for the record, we did seek it. My client did earlier,  
20 and then I did -- sought a stipulated protective order.

21           **THE COURT:** Right, I meant from the person who could  
22 grant one, which would be the Court.

23           **MR. GUTKE:** I know.

24           **MR. MULREANY:** Your Honor, I can address that I think  
25 in simplified matters. The Commission would stipulate that

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1 all the records are -- will be held confidentially. We don't  
2 agree to any redactions. That simply impairs our ability to  
3 provide full relief for defrauded customers. Mr. Gutke can  
4 stamp all of them confidential and deliver them to the offices  
5 of the United States Attorney this afternoon in Las Vegas,  
6 Nevada, and we can move forward.

7 **THE COURT:** Mr. Gutke, does that satisfy your  
8 concerns?

9 **MR. GUTKE:** As far as being able to -- the  
10 stipulation that they'll be confidential, yes. As far as them  
11 stamped and delivered today, I don't know that I can do that  
12 because there are other things that need to be taken care of,  
13 and -- and I don't have staff available to do that today.

14 **THE COURT:** Okay. When can you --

15 **MR. GUTKE:** Certainly by Monday.

16 **THE COURT:** You can do that by Monday?

17 **MR. GUTKE:** Yeah, I would just need some time to get  
18 that done.

19 **THE COURT:** Okay.

20 **MR. GUTKE:** Well, I shouldn't say Monday. I -- to  
21 tell you with certainty, I would need to contact Holo  
22 Discovery who helps me with these things. Can we have one  
23 week?

24 **MR. MULREANY:** Your Honor, the Commission would be  
25 happy to stamp them all confidential. Mr. Gutke simply needs



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1 to produce them. We'll have them all imaged, and in the  
2 imaging process we'll have them stamped confidential and we'll  
3 return the originals to Mr. Gutke.

4 **THE COURT:** Mr. Gutke, what format do you have them  
5 in? Do you have them on a thumb drive or something?

6 **MR. GUTKE:** Well, yeah, I have them -- I have a box,  
7 a Bankers Box of papers that have been given to my e-Discovery  
8 vendor, and they've scanned them. I think that they have them  
9 in PDF, but I don't know that they're on a disc or in a way  
10 that could be uploaded. If they're on a disc, I can deliver  
11 it. If -- if it's something that can be uploaded to the FTP  
12 site, I can instruct them to do that, too.

13 **THE COURT:** I'm going to order you to produce them by  
14 Tuesday afternoon at 3:00 p.m. That should give you  
15 sufficient time, whether you need to do it internally or with  
16 some additional assistance, especially because it sounds like  
17 you've already started. So non-redacted and either you stamp  
18 them confidential or, if you are unable to do that by  
19 3:00 p.m. on Tuesday, then the Commission will do so. And I  
20 also am holding to the -- the Commission to its stipulation  
21 that these documents will be held confidential.

22 **MR. MULREANY:** Very well, Your Honor.

23 **MR. KARST:** Thank you, Your Honor.

24 **MR. MULREANY:** Thank you, Your Honor.

25 **THE COURT:** Thank you.

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1 All right. Anything else then? Let me ask  
2 Ms. Karst, Mr. Mulreany again.

3 **MR. KARST:** Nothing further from the CFTC,  
4 Your Honor. Thank you very much.

5 **THE COURT:** Thank you.

6 Mr. Gutke, anything else from you, sir?

7 **MR. GUTKE:** Yes, Your Honor. A couple of points to  
8 clarify.

9 First of all, on the permanent injunction, I don't  
10 know if there was a form submitted or if the current  
11 preliminary injunction is becoming a permanent injunction on  
12 the same terms, but my question was I would like to have the  
13 ability for the defendants to review the preliminary  
14 injunction for us to understand what the exact language is of  
15 that.

16 **THE COURT:** Yeah. So you've had that opportunity  
17 because it's in the proposed order that the Commission  
18 submitted and filed. So --

19 **MR. GUTKE:** Okay.

20 **THE COURT:** -- we're unfortunately --

21 **MR. GUTKE:** That was my -- then you answered my  
22 question.

23 **THE COURT:** Yeah, so -- so -- so we're -- we're past  
24 that. I -- I will be entering a written permanent injunction  
25 in some format similar to that, but I'm still going to go

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1 through it and -- and make some changes and finalize that but  
2 based on that format.

3 **MR. GUTKE:** Being -- okay. It being attached to the  
4 motion for default judgment, that answers my question. Thank  
5 you, Your Honor.

6 And then the other question I had was Ms. Karst  
7 indicated that there were I think 128 or some number of  
8 victims that they're aware of that they based the damages  
9 calculation on. The defendants haven't ever -- we don't know  
10 who those individuals are. Can we have an order that the CFTC  
11 provide us with that list under the same terms I suppose of a  
12 protective order, if needed? But it would be helpful to know  
13 who those individuals are.

14 **THE COURT:** Ms. Karst? Mr. Mulreany?

15 **MR. MULREANY:** Your Honor, the Commission would  
16 object to that. We don't wish to revictimize these  
17 individuals by providing their data to defense -- the  
18 defendants by providing it to my brother counsel. He has an  
19 obligation to provide it to his client, so it would be the  
20 same as if we provided it directly to the defendants.

21 I will say that the Commission's normal process is to  
22 obtain a list of all defrauded customers, which we have. We  
23 can provide that to Your Honor *in camera* to the extent  
24 Your Honor wishes to see that. But making that data available  
25 either publicly in the docket or to our brother counsel would

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1 simply revictimize these individuals, and the Commission would  
2 object to that.

3 **THE COURT:** Right. So typically we would see it as  
4 maybe a restitution list and the amounts that those people  
5 were victimized by so that we can ensure that restitution gets  
6 paid appropriately.

7 Let me hear from Mr. Mulreany on how that process  
8 of -- of paying restitution and finding its proper recipients  
9 would work here.

10 **MR. MULREANY:** Thank you, Your Honor.

11 The typical case, the Commission will obtain a master  
12 list of -- of all known defrauded customers, their contact  
13 data, and the amount that they were -- that they forwarded to  
14 the defendants as part of the fraudulent scheme. Then there  
15 would be another column where, based upon the amount of assets  
16 that have been frozen -- which, unfortunately, in this case  
17 comprises absolutely zero -- or I shouldn't say that. It's  
18 probably less than a few thousand dollars. We -- the  
19 Commission would then make a *pro rata* distribution calculation  
20 based upon the amount of money seized from the defendants and  
21 the -- compared to the amount of funds that were sent to the  
22 defendants by defrauded customers.

23 To the extent that that -- that -- let's assume for  
24 the moment that eventually we end up seizing the full amount  
25 of 14 million-plus that the Court has ordered in restitution.

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1 The Commission would then approach its SRO, the National  
2 Futures Association, for its assistance. It has agreed in the  
3 past to act as a disburser of checks to defrauded victims.  
4 However, since we don't really have any funds, we're not at  
5 that -- at that stage.

6 But normally we work with our SRO, our  
7 self-regulatory organization, the National Futures  
8 Association, to assist us in that thereby sharing the burden  
9 of ensuring that, to the extent possible, defrauded customers  
10 receive their restitution that we're able to provide them.

11 I will note again for the record, though, that at  
12 this point in stage given the defendants' contemptuous  
13 conduct, the Commission has been unable to seize any  
14 appreciable amount of assets from Mr. Saffron. I will note,  
15 however, for the record, that the defendants should note that  
16 they should expect no letup in the aggressive prosecution  
17 they've seen to date by the Commission following entry of  
18 judgment.

19 **THE COURT:** Understood.

20 All right. So I'm going to --

21 *(Simultaneous crosstalk.)*

22 **MR. KARST:** Your Honor --

23 **THE COURT:** Sorry. Ms. Karst, go ahead.

24 **MR. KARST:** Yeah. I'll just note that in the  
25 proposed order we submitted to the Court at ECF 61-4, we

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1 include provisions to appoint the National Futures Association  
2 as the monitor here to distribute payments against the  
3 restitution obligation. And, Your Honor, that's at  
4 paragraphs 61 to 65.

5 **THE COURT:** Thank you.

6 All right. So I'm going to deny the request at this  
7 time. I think that there's probably going to be a lot of  
8 document exchange that goes -- goes on after this judgment  
9 gets entered. And so I would expect that there's still  
10 some -- some movement of information. So I think it's  
11 premature at this point to make that order.

12 So, Mr. Gutke, I appreciate it, but I'm going to deny  
13 it.

14 Do you have anything else, sir?

15 **MR. GUTKE:** Yes. And just to clarify, the reason  
16 that that would be useful is so that we can make sure that the  
17 records pertaining to those specific individuals are what is  
18 provided to -- to the CFTC.

19 And also, for example, my concern is that, you know,  
20 someone who is getting restitution then also comes -- you  
21 know, pursues Mr. Saffron separately, you know, and tries to  
22 demand your money or your life, you know, and then it's  
23 already -- they've already talked to the CFTC and been granted  
24 restitution -- and I'm just -- I'm going down the road even  
25 further with -- just assuming that this is going to be

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1 resolved and restitution's going to be paid, what's going to  
2 stop them from later trying to seek that money from -- from  
3 the defendants separately? That's --

4 **THE COURT:** Right.

5 **MR. GUTKE:** -- that's my concern.

6 **THE COURT:** I can appreciate that. Clearly, you  
7 know, because we've had so little response from the defense in  
8 this case and so little participation in this process from the  
9 defense, I expect there'll be some questions that may come up,  
10 and you're going to have to file motions in order to get  
11 clarification or to seek additional information perhaps. But  
12 at this point I don't think I can really -- I can fully  
13 anticipate what appropriate information should be exchanged.

14 **MR. GUTKE:** Under -- understood, Your Honor.

15 And so then one other issue then or question that I  
16 would really appreciate some clarification on, especially in  
17 light of Mr. Mulreany's final parting comments, and that is  
18 are the defendants still allowed to -- to pay me? I mean,  
19 I've spent much more time and my staff and my partner have  
20 spent a lot more time than what we've been -- than what we've  
21 been paid for. I'll just say that and say that the concern of  
22 receiving more money is because of the threats that any  
23 receipt of any money essentially is -- is a violation.

24 And so, can you clarify that the defendants are  
25 allowed to pay counsel and that, you know, unless there's some

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1 clear evidence that they're paying with funds that are  
2 ill-gotten gains or illegal, that they should be allowed to  
3 retain counsel and defend themselves and have counsel  
4 assisting them moving forward in this process? Because I  
5 can't -- I don't want to put myself and my family and everyone  
6 at risk by getting paid by a client who, you know, my  
7 understanding is the payments have been from funds that  
8 weren't associated with the allegations in this complaint, and  
9 so he should be allowed to hire counsel.

10 **THE COURT:** Let me ask the Commission to respond.  
11 Either --

12 **MR. KARST:** Your Honor, we've addressed this in our  
13 reply. Mr. Gutke continues to make false allegations against  
14 the CFTC here. We have never given legal advice. We've never  
15 told Mr. Saffron that he could not retain counsel. We, you  
16 know, respect his right to retain counsel. But they have --  
17 defendants have no right to pay for counsel using funds in  
18 violation of the Court's asset freeze.

19 And Mr. Gutke never made an application with the  
20 Court for any type of carve out from the asset freeze. He  
21 continues to refuse to disclose the -- both the amount and the  
22 source of fees that he has received to date. He did not  
23 address that in his opposition, the declaration that he filed  
24 with the Court, and, you know, we request that the Court order  
25 him to disclose the source and the amount of fees that he's



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1 paid and for the Court to require him to pay back -- surrender  
2 all fees that he's accepted already in violation of the asset  
3 freeze.

4 **THE COURT:** So -- so, Mr. Gutke, the challenge I  
5 have --

6 **MR. GUTKE:** Can I respond to that?

7 **THE COURT:** Hold on, Mr. Gutke.

8 **MR. GUTKE:** Okay. Go ahead.

9 **THE COURT:** The challenge that I'm having is I just  
10 don't have a lot of information about this; right? So I --  
11 I'm being asked to sort of decide this in -- in a black box,  
12 and -- but you can go ahead.

13 **MR. GUTKE:** Well, so -- and this is the problem I  
14 have. I've read the orders, and there's nothing that says  
15 that he can't retain counsel. He brought this issue up to --  
16 to Your Honor, and -- and I think, from my reading of the  
17 record, you sounded very clear that he's, of course, allowed  
18 to have attorneys.

19 But the CFTC's approach to dealing with counsel is  
20 completely detached from -- from Your Honor's comments in  
21 court in January 2020. And their position, as you just heard  
22 right now, is basically that I have to seek a carve out of an  
23 asset freeze? I'm not asking to be paid with -- with funds  
24 that have been frozen. I'm not. And I -- I did not get paid  
25 with any funds that have been frozen to my knowledge.

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1           **THE COURT:** Well, the difficulty is that because the  
2 defendant has not complied with the freeze order and there's  
3 really nothing that's been frozen because of that, because so  
4 much of this is this digital currency, that there is no --  
5 there aren't buckets that we can look to at this point. So --  
6 so you're telling us that, but I have no way to even determine  
7 that.

8           Ms. Karst, is that essentially the issue here?

9           **MR. KARST:** Yes, Your Honor, that is the issue. We  
10 have asked Mr. Gutke, you know, even before he entered his  
11 appearance if he would speak with us, disclose the source and  
12 amount of the fees that he's getting from the defendants so we  
13 wouldn't have this issue.

14           He made no application with the Court. He refuses to  
15 provide us any information. We just don't have anything to  
16 work with. And given defendants' propensity to use third  
17 parties to transfer and move funds around, you know, we still  
18 have serious concerns that counsel is being paid with funds  
19 that have been frozen in violation of the asset freeze.

20           **THE COURT:** Right. Go ahead and respond, Mr. Gutke.

21           **MR. GUTKE:** Well, first of all, those things are  
22 protected by attorney-client privilege. You know, how much  
23 the retainer was paid or if a third party provided it on  
24 behalf of the defendants, those are privileged things.

25           And the way that I've always understood that

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1 something like this would work is that, if the plaintiff has  
2 reason to believe that defendants have violated the asset  
3 freeze by hiring counsel, then they can present the evidence  
4 that gives them the reason to believe that, and they can have  
5 a determination be made on that.

6 It seems unfair that the defendants are being forced  
7 and have been forced from the very start -- and there's  
8 multiple attorneys who have wanted to maybe make an appearance  
9 in the case but shied away from it because of the threats  
10 that, you know, that I'm receiving now from the CFTC that  
11 they're going to disgorge all the funds and they're going to,  
12 you know, do everything -- the previous attorney had his  
13 personal bank accounts frozen, family's accounts frozen. So  
14 this is something that has been a problem.

15 And so my belief is that the defendants should be  
16 allowed to hire counsel. Obviously counsel has an obligation  
17 to not receive funds, and I can say that I would never accept  
18 funds if I had reason to believe that the funds were being  
19 funneled to me by a straw man or if they were coming from  
20 assets that were illegally obtained by my client. I -- I  
21 would not do that, and I -- and so to place the burden on the  
22 defendants to, like, prove a negative is the part that I have  
23 a problem with.

24 And you can see from the comments from counsel that  
25 it doesn't matter -- they're operating under the assumption

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1 that anything -- any money that he spends on anything is -- is  
2 just violation of the asset freeze. If he's buying groceries,  
3 it's a violation of the asset freeze. Anything he does is a  
4 violation, and so that's my concern. And I have that concern  
5 as we leave this hearing that they're going to immediately  
6 make me a defendant or they're going to, you know, freeze my  
7 children's college funds. I mean, I -- I sound paranoid and  
8 I've never really been one to be this way, but they wield  
9 great power.

10 And, you know, to use the really cheesy cliché, with  
11 great power comes great responsibility. They need to be more  
12 responsible in terms of not just making these allegations  
13 and -- and making me into a criminal and making anyone into --  
14 to someone that's facilitating someone who, by the way, has no  
15 criminal charges brought against him. This is a civil  
16 complaint for damages, which the Court has now awarded.

17 And so it's just the tone of -- of working with the  
18 CFTC that is just incredibly frustrating, and I probably  
19 sound -- I apologize for my tone, Your Honor, because I -- I  
20 don't get very fired up and worked up like this. You've seen  
21 me in court on other matters. I just -- there's things here  
22 that give me a lot of pause for concern. My firm may need to  
23 withdraw, you know, if the defendants aren't able to -- to pay  
24 obligations for work that's been done or that will -- will  
25 need to be done. Because a lot of work will need to be done.

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1 And, you know, no attorney [indiscernible] their own personal  
2 freedom is going to want to represents the defendants when --  
3 based on the entirety of the record in this case.

4 **THE COURT:** So here's -- here's the thing.  
5 Completely understand your concerns about a defendant being  
6 able to be represented, and the courts have recognized that,  
7 too, and established a process for how this happens when  
8 there's an asset freeze.

9 So, unfortunately, what we keep having happen in this  
10 case is last-minute attempts to come in and deal with these  
11 issues on behalf of the defense. And, unfortunately, it's the  
12 defendants that keep putting their lawyers in this position by  
13 doing everything at the last moment and in no way complying  
14 with any of the -- any of the requirements and processes that  
15 have been established for cases like this. And so here we are  
16 again, and now I'm being asked again to -- to decide an issue  
17 that I just don't have any briefing on, I don't have case law  
18 on, I don't have affidavits, I have no information in order to  
19 allow me to make an informed decision about the issue of  
20 whether or not you can be paid.

21 Can you be -- can you be hired? Can your -- can your  
22 clients have representation and have an attorney represent  
23 them? Absolutely. But there has to be an ordered process to  
24 determine how the money gets paid for that representation.  
25 And so that's not happening here yet because nobody's filed an

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1 appropriate motion.

2 I agree with you that there's a bit of a  
3 disadvantage. It means that you sort of have to work for free  
4 for a bit, and -- and maybe that's not something that is  
5 appetizing to you. So maybe you don't want to do that  
6 representation. Maybe it's going to be a different lawyer  
7 that needs to be doing that on behalf of the defense. But  
8 this case has been going on a year and a half, and it has sat  
9 idle for many months because, unfortunately, I have another  
10 300 motions from other cases that I've been working on and so  
11 this one's been sitting for a while. There's been a great  
12 opportunity here for a lot of things to get filed and  
13 resolved, and it's just not happening.

14 So there's a process. I can't just decide this stuff  
15 in a vacuum without an informed briefing process, and I'm not  
16 going to.

17 So if -- if you, Mr. Gutke, want to continue to  
18 represent this client and they want you to continue to  
19 represent them, you're going to have to just go through the  
20 process. And I'm sorry for that. I realize that it's a -- a  
21 challenge. The defendant certainly has the ability to retain  
22 counsel and have counsel represent them, but they have to do  
23 it in a certain way because there's been an asset freeze in  
24 place. So that changed the game, and that means that we have  
25 to have briefing on things. That's the difference here. It's

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1 not that this is just a case that just started. This is a  
2 case that's been sitting for a year and a half, and that's  
3 why. So -- and there's been a history of non-compliance here.

4 So it isn't a clean slate. It's a case with a lot of  
5 established principles. And, unfortunately, there are --  
6 there are procedures that have to be complied with. So I  
7 can't tell you that you can run up a bill of a certain amount  
8 and that the defendants can pay you with whatever funds  
9 because I just don't know where those funds are coming from  
10 and I don't have enough money -- enough information to talk  
11 about what happens to the money.

12 So there's a procedure. It's got to be followed, and  
13 then I can decide it in an intelligent and informed way. But  
14 I can't do it today.

15 **MR. GUTKE:** So my -- I appreciate that, Your Honor,  
16 and I understand. We're kind of both operating in a black box  
17 of sorts because, you know -- but so, my question is -- and  
18 pardon my ignorance perhaps, but what is that procedure then?  
19 Because my reading of the orders is that the defendants cannot  
20 use frozen funds. The CFTC's position is that all their funds  
21 are subject to the order, and so I need to seek a carve out  
22 from them.

23 **THE COURT:** Right. So my -- my vague recollection is  
24 that the United States Supreme Court addressed this issue a  
25 few years back about how to do that because there is a

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1 disadvantage of everything gets frozen and the defendant can't  
2 have any -- any lawyers, and that can't be the answer. So  
3 I'm -- I'm certain that there's a procedure that is  
4 established. I can't give you the legal advice at this moment  
5 on how to do that.

6 **MR. GUTKE:** Okay.

7 **THE COURT:** I don't know --

8 **MR. GUTKE:** That's fine.

9 **THE COURT:** -- if Ms. Karst or --

10 **MR. GUTKE:** My question was --

11 *(Simultaneous crosstalk.)*

12 **THE COURT:** -- wants to -- or Mr. Mulreany wants to  
13 add anything.

14 **MR. MULREANY:** For the record, Your Honor, this is  
15 Tim Mulreany for the Commission.

16 I -- I -- the Commission refrains from giving legal  
17 advice to brother counsels. I would note, however, that to  
18 the extent that Mr. Gutke knows a good criminal defense  
19 attorney, he might want to ask those individuals how they deal  
20 with it.

21 It's a very common issue in criminal cases where, for  
22 instance, someone's accused of drug money laundering. There's  
23 a very clear, easy, and defined process the defense counsel  
24 goes through to ensure that the funds they're accepting are  
25 not the -- the fruits of unlawful bank transfers or wire



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1 transfers or other fraudulent activity.

2 And I would note for the record that I do not believe  
3 that the amount of one's attorney's fees or its source is  
4 attorney-client privileged information, but that's -- that's  
5 simply my personal opinion. I would urge my brother counsel  
6 to reach out to other counsel who have gone through the  
7 process, and I'm sure they can provide him with a very  
8 detailed and uncomplicated process in which to accomplish that  
9 which he wishes to perform.

10 **THE COURT:** Great suggestion. Thank you.

11 All right. Mr. Gutke --

12 **MR. GUTKE:** And, Your Honor, if I could --

13 **THE COURT:** Yes?

14 **MR. GUTKE:** Sorry. I jumped the gun. These  
15 videoconferences I -- I hate. I don't -- I think I've only  
16 started speaking over judges in the era of them, so I  
17 apologize.

18 But -- so I appreciate the comments from counsel. My  
19 question was more whether there was a procedure on the record  
20 in this case that I wasn't aware of, you know, prior to my  
21 involvement. So -- so thank you to the Court and to counsel.

22 And then could I just then confirm that my -- my  
23 understanding again of the -- of the injunction -- and I  
24 assume it's the same language in the permanent injunction --  
25 is that the defendants are allowed to spend -- to use assets

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1 that are obtained after the -- the injunction and asset freeze  
2 were entered in this case? Is that -- is that a correct  
3 understanding, Your Honor?

4 **THE COURT:** I don't know the answer to that. I --

5 **MR. GUTKE:** For example --

6 **THE COURT:** I don't recall that being a term.

7 **MR. GUTKE:** Okay. Let me -- just so it's clear --

8 **THE COURT:** Ms. Karst --

9 **MR. GUTKE:** -- let me look at the order.

10 **THE COURT:** Ms. Karst, can you maybe clarify that?

11 **MR. KARST:** Yes, Your Honor --

12 *(Simultaneous crosstalk.)*

13 **MR. GUTKE:** In the order for preliminary --

14 **MR. KARST:** -- the order. After-acquired assets are  
15 fine, but if they are proceeds and part of the fraudulent  
16 activity, then they would still be covered by the freeze. And  
17 we are not --

18 **MR. GUTKE:** Yeah, I'm --

19 *(Simultaneous crosstalk.)*

20 **MR. KARST:** -- aware of any source of legitimate  
21 income for Mr. Saffron.

22 **THE COURT:** Right. I mean, if he's, you know,  
23 working at -- I don't know -- some other actual employment and  
24 getting a paycheck from that, I would think that absolutely  
25 would not be covered. But I think the Commission -- what the

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1 Commission's saying is they're unaware of him having  
2 legitimate employment from which additional funds and clean  
3 funds, unencumbered funds might be coming.

4 **MR. GUTKE:** Okay. Understood. And what I was  
5 referring to, Your Honor, was in Document Number 31 in the  
6 docket and on page 4, the portion of your order of the asset  
7 freeze and injunction states that assets obtained after the  
8 effective date of this order are not subject to the terms of  
9 this order unless they are derived from or related to the  
10 activities alleged in the complaint.

11 So, you know, if my client is, you know, since  
12 December 2019 when that order was entered, you know, receiving  
13 income consulting on -- on other projects, that even if  
14 they're in the cryptocurrency space or DeFi -- which has been  
15 a growing area where, you know, my client's expertise is -- is  
16 needed and useful -- and people are willing to hire him, you  
17 know, as an expert in the blockchain and in the realizing or  
18 the decentralized finance, et cetera, you know, he has means  
19 to earn money, and so he should be able to use that money how  
20 he wants.

21 And we've had, you know, as the -- one of the motions  
22 on the docket [indiscernible] is the CFTC basically freezing  
23 any asset he has just operating from the presumption that  
24 it's -- that it's part of the asset freeze without first  
25 establishing that. So -- and that ship's sailed. I

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1 understand. But I'm just talking about his ability to pay a  
2 lawyer with -- with income he earns since the date of this  
3 asset freeze. He's allowed to do that?

4 **THE COURT:** Yeah, if he -- if he --

5 **MR. GUTKE:** Okay.

6 **THE COURT:** -- if he's earning income from something  
7 unrelated to the allegations in the complaint that have now  
8 become the facts that underlie the default judgment, then I  
9 would think that that is not subject to the asset freeze.

10 Ms. Karst, would you agree?

11 **MR. KARST:** Yes, Your Honor. If it's wholly, you  
12 know, unrelated and not derived from the activities that we  
13 know and understand Mr. Saffron is still engaged in, then --

14 **THE COURT:** Yep.

15 **MR. KARST:** -- it would not be covered.

16 **THE COURT:** Does that --

17 **MR. GUTKE:** Okay.

18 **THE COURT:** -- answer your question, Mr. Gutke?

19 **MR. GUTKE:** Yes, it does.

20 And can you -- is my audio good? I was on the phone,  
21 and it got disconnected.

22 **THE COURT:** I see you and hear you.

23 **MR. GUTKE:** No?

24 **THE COURT:** I see you and hear you. I think he does  
25 not see or hear us.

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1           **MR. GUTKE:** Okay, okay. I can't hear. My -- my  
2 audio got disconnected from my phone, so now I'm trying to get  
3 it on the computer.

4           But, okay, I -- I heard. And thank you for  
5 clarifying that.

6           **THE COURT:** Okay. Any other questions, Mr. Gutke?

7           **MR. GUTKE:** No, I don't think so, Your Honor.

8           **THE COURT:** Anything else from the Commission?

9           **MR. KARST:** No, Your Honor.

10          **THE COURT:** All right. We anticipate -- I anticipate  
11 that I will get an order out early next week that memorializes  
12 and probably contains some further implementation tools based  
13 on the proposed order that was provided by the Commission, but  
14 for the most part my rulings and the basis for them have all  
15 been placed on the record here. And so the transcript of the  
16 hearing today will serve as the record of my findings and  
17 conclusions supporting these decisions.

18          All right, everyone. Have a good weekend. Thank you  
19 for your arguments and your participation today, and we are  
20 adjourned.

21          *(Proceedings adjourned at 12:17 p.m.)*

22                               --o0o--

23                               COURT REPORTER'S CERTIFICATE

24  
25           I, AMBER M. McCLANE, Official Court Reporter, United

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1 States District Court, District of Nevada, Las Vegas, Nevada,  
2 do hereby certify that pursuant to 28 U.S.C. § 753 the  
3 foregoing is a true, complete, and correct transcript of the  
4 proceedings had in connection with the above-entitled matter.  
5

6 DATED: 4/1/2021  
7

8 /s/ Amber M. McClane  
9 AMBER MCCLANE, RPR, CRR, CCR #914  
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UNITED STATES DISTRICT COURT  
Amber McClane, RPR, CRR, CCR #914